

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK

---

RICHARD D.,

Plaintiff,

Civil Action No.  
5:19-CV-0188 (DEP)

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

---

APPEARANCES:

OF COUNSEL:

FOR PLAINTIFF

OSTERHOUT DISABILITY LAW  
521 Cedar Way, Suite 200  
Oakmont, PA 15139

KARL E. OSTERHOUT, ESQ.  
HANNALORE MERRITT, ESQ.  
PAUL B. EAGLIN, ESQ.

FOR DEFENDANT

HON. GRANT C. JAQUITH  
United States Attorney  
P.O. Box 7198  
100 S. Clinton Street  
Syracuse, NY 13261-7198

MONIKA K. CRAWFORD, ESQ.  
Special Assistant U.S. Attorney

DAVID E. PEEBLES  
U.S. MAGISTRATE JUDGE

ORDER

Currently pending before the court in this action, in which plaintiff seeks judicial review of an adverse administrative determination by the Commissioner of Social Security, pursuant to 42 U.S.C. §§ 405(g) and

1383(c)(3), are cross-motions for judgment on the pleadings.<sup>1</sup> Oral argument was heard in connection with those motions on March 12, 2020, during a telephone conference conducted on the record. At the close of argument I issued a bench decision in which, after applying the requisite deferential review standard, I found that the Commissioner's determination resulted from the application of proper legal principles and is supported by substantial evidence, providing further detail regarding my reasoning and addressing the specific issues raised by the plaintiff in this appeal.

After due deliberation, and based upon the court's oral bench decision, which has been transcribed, is attached to this order, and is incorporated herein by reference, it is hereby

ORDERED, as follows:

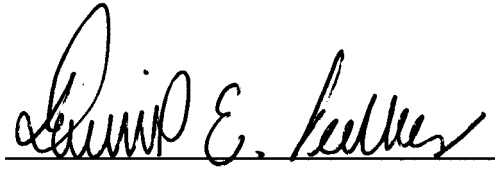
1) Defendant's motion for judgment on the pleadings is GRANTED.

2) The Commissioner's determination that the plaintiff was not disabled at the relevant times, and thus is not entitled to benefits under the Social Security Act, is AFFIRMED.

---

<sup>1</sup> This matter, which is before me on consent of the parties pursuant to 28 U.S.C. § 636(c), has been treated in accordance with the procedures set forth in General Order No. 18. Under that General Order once issue has been joined, an action such as this is considered procedurally, as if cross-motions for judgment on the pleadings had been filed pursuant to Rule 12(c) of the Federal Rules of Civil Procedure.

3) The clerk is respectfully directed to enter judgment, based upon this determination, DISMISSING plaintiff's complaint in its entirety.

A handwritten signature in black ink, appearing to read "David E. Peebles", written over a horizontal line.

David E. Peebles  
U.S. Magistrate Judge

Dated: March 16, 2020  
Syracuse, NY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

-----x  
ROBERT D.,

Plaintiff,

-v-

5:19-CV-188

COMMISSIONER OF SOCIAL SECURITY,

Defendant.  
-----x

**TRANSCRIPT OF PROCEEDINGS**  
**BEFORE THE HONORABLE DAVID E. PEEBLES**  
March 12, 2020  
100 South Clinton Street, Syracuse, New York

For the Plaintiff:  
(Appearance by telephone)

OSTERHOUT DISABILITY LAW  
521 Cedar Way  
Suite 200  
Oakmont, Pennsylvania 15139  
BY: **HANNALORE B. MERRITT, ESQ.**

For the Defendant:  
(Appearance by telephone)

SOCIAL SECURITY ADMINISTRATION  
26 Federal Plaza  
Room 3904  
New York, New York 10278  
BY: **MONIKA K. CRAWFORD, ESQ.**

*Hannah F. Cavanaugh, RPR, CRR, CSR, NYACR, NYRCR*  
*Official United States Court Reporter*  
*100 South Clinton Street*  
*Syracuse, New York 13261-7367*  
*(315) 234-8545*

1           (In chambers, counsel present by telephone. Time  
2 noted: 11:36 a.m.)

3           THE COURT: Plaintiff has commenced this proceeding  
4 pursuant to 42, United States Code, Sections 405(g) and  
5 1383(c)(3) to challenge a determination by the Commissioner of  
6 Social Security denying plaintiff's application for benefits and  
7 finding that he was not disabled at the relevant times.

8           The background is as follows: Plaintiff was born in  
9 August of 1965. He is currently 54 years old. He was 47 years  
10 of age at the time of the alleged onset of his disability on  
11 January 1, 2013. Plaintiff is approximately 5'9" in height and  
12 weighs approximately 190 pounds. He lives in a trailer alone  
13 with his 90-pound German Shepherd in Pennellville, New York. He  
14 has a truck driving license. In terms of work, plaintiff has  
15 not worked since September of 2010. He held various truck  
16 driving positions from January 2000 through September 2010.  
17 Plaintiff suffered an all-terrain vehicle accident in 2006.

18           Physically, he suffers from several diagnosed  
19 conditions: Neck pain, including in his shoulders; lumbar pain,  
20 bad knees; prickles in his legs; COPD; tingling and numbness in  
21 his hands; Raynaud's phenomenon; a clotting disorder; peripheral  
22 vascular disease; inflammatory arthritis; and undifferentiated  
23 connective tissue disease, which I will refer to as UTCD. I  
24 note that he had a heart attack in 2010 and had a stent  
25 implanted. He also underwent an SMA thrombectomy in April of

1 2014 by Dr. Michael Constanza and a right leg artery bypass in  
2 July of 2014, also by Dr. Constanza.

3 His UCTD is referenced in several of the records of  
4 Dr. Hom Neupane, who began treating the plaintiff in December of  
5 2015. The notes of Dr. Neupane indicate that the condition is,  
6 quote, clinically stable on Plaquenil without side effects.  
7 That's at page 670 to 673 of the Administrative Transcript.  
8 Plaintiff's primary care provider is Dr. Patil Vandana. He  
9 initially saw the plaintiff on December 4, 2013. At the time,  
10 the plaintiff, at that initial encounter, asked that Dr. Vandana  
11 prepare a disability form on his behalf. The doctor declined.

12 He also has seen, as I indicated, Dr. Neupane at the  
13 Upstate Medical Center and has seen physicians at Upstate  
14 Orthopedics. He has also seen Dr. David Churchill at  
15 Hematology/Oncology Associates. He has been treated at  
16 Gastroenterology and Hepatology of Central New York and Upstate  
17 Comprehensive Pain Medicine. He was consultatively examined by  
18 Dr. Kalyani Ganesh on June 24, 2015. Dr. Ganesh issued a report  
19 with a medical source statement at Exhibit 2F.

20 The plaintiff has been prescribed various  
21 medications, including Nortriptyline, Lisinopril, Spiriva,  
22 Prednisone, Warfarin, Plaquenil, Coumadin, Oxycodone,  
23 Omeprazole, Nitroglycerine, and Plavix.

24 In terms of activities of daily living, plaintiff is  
25 able to cook, do laundry, do some walking of his dog, shower,

1 and dress. Plaintiff is a smoker. He has smoked for 30 years.  
2 He has smoked between a half and two packs of cigarettes per day  
3 against medical advice. That's at page 52. There's also  
4 occasional marijuana use indicated in the records.

5           Procedurally, plaintiff applied for Title II  
6 disability insurance benefits on February 9, 2015, and Title XVI  
7 Supplemental Security Income benefits on February 25, 2015. In  
8 both, he alleged an onset date of January 1, 2013. At page 240,  
9 he claims the following in support of his application for  
10 disability benefits: COPD, heart attack, two crushed discs in  
11 back, hypertension, hyperlipidemia, coronary artery disease,  
12 peripheral artery disease, peripheral artery bypass in right leg  
13 and abdomen.

14           A hearing was conducted by Administrative Law Judge  
15 Roxanne Fuller on February 27, 2017, to address plaintiff's  
16 application for benefits. Judge Fuller issued a decision on  
17 June 22, 2017, finding that plaintiff was not disabled at the  
18 relevant times and therefore ineligible for the benefits sought.  
19 That became a final determination of the agency on August 6,  
20 2018, when the Social Security Administration Appeals Council  
21 denied plaintiff's request for a review.

22           In her decision, ALJ Fuller applied the familiar  
23 five-step sequential test for determining disability. She noted  
24 that the last date of insured status for the plaintiff was  
25 December 31, 2015. She then went on to find at step one that

1 plaintiff had not engaged in substantial gainful activities  
2 since his alleged onset date of January 1, 2013.

3           At step two, she concluded that plaintiff suffers  
4 from severe impairments that impose more than minimal  
5 limitations on the ability to perform work-related functions,  
6 including coronary artery disease, chronic obstructive pulmonary  
7 disease or COPD, degenerative disc disease of the lumbar spine,  
8 and carpal tunnel syndrome.

9           At step three, she concluded that plaintiff's  
10 conditions do not meet or medical equal any of the listed  
11 presumptively disabling conditions set forth in the  
12 Commissioner's regulations, specifically considering listings  
13 1.04, 3.02, and 4.04.

14           Next, the Administrative Law Judge concluded that  
15 plaintiff can retain the residual functional capacity to perform  
16 light work with various limitations -- one of which I didn't  
17 understand -- that she can never perform foot control operation  
18 with both hands; is limited to only occasional climbing of ramps  
19 or stairs; only occasional climbing of ladders, ropes, or  
20 scaffolds; is limited to occasional balancing, stooping,  
21 crouching, kneeling, or crawling; is limited to frequent  
22 fingering, that is fine manipulation with both hands; can  
23 frequently handle objects, that is gross manipulation with both  
24 hands; is limited to occasional exposure to moving mechanical  
25 parts; occasional operation of a motor vehicle; and occasional



1 exposure to unprotected heights; is limited to occasional  
2 exposure to irritants, such as fumes, odors, dusts, and gases;  
3 and is limited to occasional exposure to poorly ventilated areas  
4 and occasional exposure to chemicals.

5 At step four, the Administrative Law Judge concluded  
6 that plaintiff is unable to perform his past relevant work due  
7 to the exertional requirements associated with that work.

8 At step five, she noted initially that if plaintiff  
9 were capable of performing a full range of light work, the  
10 Medical-Vocational Guidelines, or the grids, would direct a  
11 finding of no disability under Grid Rule 202.18. After noting  
12 that there were additional limitations that required the  
13 testimony of a vocational expert, which was elicited at the  
14 hearing, ALJ Fuller concluded that plaintiff is capable of  
15 performing available work in the national economy, including as  
16 a cashier, a retail marker, and a dining room attendant, and was  
17 therefore not disabled.

18 As you know, my task is limited. The test that I  
19 apply is extremely deferential. The Court must determine  
20 whether correct legal principles were applied and the result is  
21 supported by substantial evidence. As the Second Circuit noted  
22 in *Brault v. Social Security Administration*, 683 F.3d 443, from  
23 the Second Circuit, 2012, it is an extremely exacting standard,  
24 more rigid than the clearly erroneous standard. Substantial  
25 evidence is defined as such evidence as a reasonable mind might

1 accept as adequate to support a conclusion. It was noted in  
2 *Brault*, also, that this means that once an ALJ finds facts, they  
3 can be rejected only if a reasonable factfinder would have to  
4 conclude otherwise.

5           In this case, the contentions of the plaintiff are  
6 limited to the failure at step two and beyond to consider  
7 plaintiff's diagnosed UCTD and the effects that that had on the  
8 analysis of plaintiff's subjective statements concerning his  
9 symptoms, what we used to call the credibility analysis. As a  
10 backdrop, I note it is plaintiff's burden to show any  
11 limitations resulting from diagnosed medical conditions through  
12 the RFC and step four under *Poupore*. And I'll also note that  
13 the mere diagnosis of a condition is not the central focus of  
14 the disability analysis, it is the resulting limitations that  
15 flow from any diagnosed medical condition.

16           In this case, I understand UCTD, it is an autoimmune  
17 disease not vastly different than fibromyalgia, and so it does  
18 not always manifest itself in objective tests such as magnetic  
19 resonance imaging testing and so forth. The condition was  
20 diagnosed by Dr. Neupane, who began treating plaintiff in  
21 December of 2015. And therefore after plaintiff made his  
22 application for disability benefits and after Dr. Ganesh  
23 examined the plaintiff in June of 2015, the plaintiff claims  
24 error at step two.

25           It's clear that the governing regulations provide an

1 impairment or combination of impairments is not severe if it  
2 does not significantly limit claimant's physical or mental  
3 ability to do basic work activities, 20 C.F.R. Section  
4 404.1521(a). The section goes on to describe what is meant by  
5 the phrase basic work activities to include the abilities and  
6 aptitudes necessary to do most jobs.

7           The test at step two unquestionably is de minimis and  
8 intended to weed out only truly the weakest of cases, but I'll  
9 reiterate, the mere presence of a disease or impairment or  
10 establishing that a person has been diagnosed or treated for a  
11 disease or an impairment is not in and of itself sufficient to  
12 establish a condition as severe, *Coleman v. Shalala*, 895 F.  
13 Supp. 50 at 53 from the Southern District of New York, 1995.

14           In this case, it's clear that the plaintiff did  
15 suffer from a condition, specifically UCTD. It had been  
16 diagnosed apparently -- the plaintiff attributes his pain, based  
17 on medical records, to that condition. I will assume for the  
18 sake of argument that that is true, that the plaintiff has  
19 sustained his burden of establishing not only the existence of  
20 the condition, but that the pain that he experienced flowed from  
21 that condition and, therefore, the failure to reference it at  
22 step two was error.

23           I find, however, that the error was harmless. It's  
24 well established that if there is a finding of any impairment at  
25 step two that is severe and the sequential analysis continues,

1 there's no error as long as the symptoms associated with the  
2 condition are considered by the Administrative Law Judge. In  
3 this case, the plaintiff alleged that his back and leg pain  
4 precluded work. That's at pages 45 to 47 and 58 of the  
5 Administrative Transcript. The Administrative Law Judge  
6 considered his allegations of pain.

7           The so-called credibility analysis or the two-step  
8 analysis of plaintiff's subjective complaints was not infected  
9 in this case because the Administrative Law Judge did find the  
10 existence of medically determinable physical or mental  
11 impairments that could reasonably be expected to produce the  
12 pain or symptoms, even though it was not specifically  
13 articulated to be the UCTD, and the Administrative Law Judge  
14 went on to engage in the requisite analysis considering  
15 plaintiff's treatment, conservative treatment, activities of  
16 daily living, specifically referencing the medical records of  
17 Dr. Vandana and -- who she refers to as Dr. Patil, but I think  
18 that's his first name -- and also the consultative examination  
19 of Dr. Ganesh.

20           The records of Dr. Neupane -- as I indicated  
21 previously, the records from Dr. Neupane indicate that  
22 plaintiff's UCTD is clinically stable on Plaquenil. The ALJ  
23 considered the use of Ibuprofen and no treatment for his back  
24 prior to December of 2013, the fact that there isn't any  
25 indication that he saw any specialists, X-rays and MRI results

1 were modest. I understand that that necessarily doesn't  
2 preclude a finding that UCTD could cause pain, but the exam of  
3 Dr. Ganesh and his findings with regard to pain, range of  
4 motion, and so forth, support the residual functional capacity  
5 and specifically the exertional requirements.

6 The opinions of Dr. Ganesh were credited, although  
7 ALJ Fuller did add additional limitations beyond what Dr. Ganesh  
8 found in his medical statement to address plaintiff's COPD and  
9 carpal tunnel syndrome. The Administrative Law Judge also  
10 considered plaintiff's allegations of pain and fatigue at page  
11 33 and 34 of the Administrative Transcript.

12 So I find that plaintiff failed to meet the stringent  
13 standard of *Brault* and its progeny and that the RFC in this case  
14 is supported by substantial evidence. I find that the  
15 Commissioner carried his burden at step five by relying on the  
16 testimony of a vocational expert to determine the existence of  
17 jobs in the national economy that plaintiff was cable of  
18 performing. I will therefore grant judgment on the pleadings to  
19 the defendant and dismiss plaintiff's complaint.

20 This was a fascinating case and I appreciated the  
21 oral arguments on both sides. It was very helpful to the Court.  
22 I hope you all have a good afternoon.

23 MS. MERRITT: Thank you, your Honor.

24 MS. CRAWFORD: Thank you, your Honor.

25 (Time noted: 11:54 a.m.)

1  
2 CERTIFICATE OF OFFICIAL REPORTER  
3

4  
5 I, HANNAH F. CAVANAUGH, RPR, CRR, CSR, NYACR,  
6 NYRCR, Official U.S. Court Reporter, in and for the United  
7 States District Court for the Northern District of New York, DO  
8 HEREBY CERTIFY that pursuant to Section 753, Title 28, United  
9 States Code, that the foregoing is a true and correct transcript  
10 of the stenographically reported proceedings held in the  
11 above-entitled matter and that the transcript page format is in  
12 conformance with the regulations of the Judicial Conference of  
13 the United States.

14  
15 Dated this 13th day of March, 2020.

16  
17 X Hannah F. Cavanaugh

18 HANNAH F. CAVANAUGH, RPR, CRR, CSR, NYACR, NYRCR  
19 Official U.S. Court Reporter  
20  
21  
22  
23  
24  
25